

WHISARD Compliance Action Report

U.S. Department of Labor

Wage and Hour Division

Case ID: 1771291 Originating District: San Francisco District Office
Local Filing Number: 2015-316-09232 Investigating District: San Francisco District Office
WHMIS Case Number: Lead Investigator: EX 687(9)
Registration Date: 09/15/2015
Assignment Date: 09/15/2015

Employer Information

Trade Name: Scienn Hail Care Homes
Address: 1840 Kern Mountain Way

Antioch, CA94531

Legal Name: Scienn Hail Care Homes
EIN: 20-0792150
County: Contra Costa
NAICS Code: 623312
No. Of Employees: EX 4

Investigation Information

Period Investigated From: 09/01/2013
To: 09/01/2015
Investigation Type: EX 7(E)
Investigation Tool: Limited Investigation
Compliance Status: Not Applicable

BNPI:
Reinvestigation: ☒
Recurring Violation: ☐
Future Compliance Agreed: ☐
Involved in AG: ☐

Recommended Action:

BWFS: ☐
CMP: ☐
Litigation: ☐
Civil Action: ☐
Criminal Action: ☐
Submit For Opinion: ☐

RO/NO Review: ☐
Follow Up Investigation: ☐
Other Action: ☐
Denial of Future Certificate: ☐
BW Payment Deadline: ☐
Trailer forms attached: ☐

CL

Violation / Compliance Status	Violations	EEs Affected	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
No Violation found for this act / Not Applicable					\$0.00	\$0.00	

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FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
15(a)(3) / Agree to Comply	2	0	\$0.00	\$0.00	\$0.00	\$0.00	
FLSA Totals:	0	2	\$0.00	\$0.00	\$0.00	\$0.00	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	0	Unduplicated Employees Agreed:	0
Total Amount BWs Computed:	\$0.00	Total Amount BWs Agreed:	\$0.00
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

Conclusions & Recommendations:

30.25 hrs. ER. cov. under FLSA 15(a)(3). Inv. disclo. termination of 2 EEs under 15(a)(3) and forced kickback of wages from prev. inv. (Case ID#1691508, 1691500, 1691501, 1691504). Case ref. to Contra Costa DA for prosecution. ER to pay est. \$760k in restitution to EEs. Rec. admin. closure.

WHI Signature: _____ Date: 02/02/2016

Reviewed By: _____ Date: _____

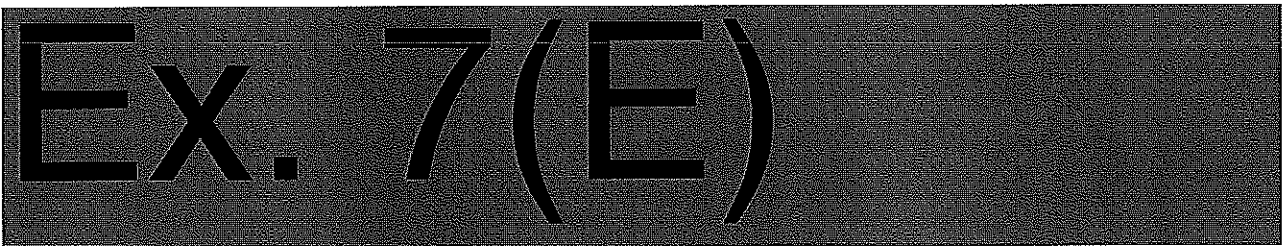
FLSA Narrative

Scienn Hail
1840 Kern Mountain Way
Antioch, CA 94531

Phone: 510-286-4201

EIN #20-0792150

COVERAGE



Ex. 7(E) the California State Department of Labor Standards Enforcement and the Contra Costa District Attorney had conducted a task force site investigation of this employer in September 2014. The State of California had already ordered the employer to pay \$260,000 for minimum wage violations, \$190,000 for overtime violations, and \$312,000 in liquidated damages for violations which occurred between 2011 and 2014, a period of time which overlaps with the investigative period of the previous DOL cases.

Section 3(d) Employer

Glenda and Rommel Publico are the firm's owners and 3d employers who interacted with the employees with respect to policies and wage payments.

Period of Investigation:

September 1, 2013 to September 1, 2015

Investigation History:

In 2013, the USDOL investigated each of the employer's locations and found the following:

- Scienn Hail Care Home, 5035 Fernbank Way, Antioch, CA 94531 (Case ID#1691500)
 - \$18,140.92 in back wages due to five employees for minimum wages.
- Scienn Hail Care Home, 2644 Carson Way, Antioch, CA 94531 (Case ID# 1691508)

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- \$57,238.04 in back wages due to eight employees for minimum wage and overtime violations.
- Scienn Hail Care Home, 1840 Kern Mountain Way, Antioch, Ca 94531 (Case ID# 1691501)
- \$16101.34 in back wages due to two employees for minimum wage and overtime violations.
- Scienn Hail Care Home, 2652 Carson Way, Antioch, CA 94531 (Case ID#1691504)
- \$41,777.91 in back wages due to seven employees for minimum wage and overtime violations.

MODO: This employer is a multi-unit employer with establishments in the jurisdiction of the SFDO. This case has been associated with MODO Control ID#51710 (Exhibit D-1).

Coverage:

FLSA Section 215(a)(3) does not establish a coverage threshold for employers.

EXEMPTIONS

STATUS OF COMPLIANCE

Section 6:

This is a limited investigation which examined allegations that the employer retaliated against employees and failed to pay back wages recovered under previous investigations. Ex. 7(E)

Section 7:

This is a limited investigation which examined the allegations that the employer retaliated against employees and failed to pay back wages recovered under previous investigations. Ex. 7(E)

Section 11:

No violation found. This limited investigation was conducted under Section 215(a)(3).

Section 12:

No violation found. A tour of the establishment confirmed that the firm does not employ minors.

Section 15(a)(3):

EX. 7(E)

EX. 7(E) The employee said that Rommel Publico arrived at the care home that afternoon and told her that they were going to the bank and she was to cash the check and return the funds to him. He waited in the lobby for her, and when they returned to the car, she gave back the money. Mr. Pulbico then drove her back to the facility. This employee also states that she heard Mr. Publico inform another employee he was going to be taken to the bank next. She stated that the employee confirmed that he went to the bank twice with Rommel and gave back the money (Exhibits B-2).

A third employee, stated to the DOL that she never received the back wages she was due for the case (Exhibit B-3 and B-3b). She was not taken to the bank. She states that she was given the blank DOL Form WH-58 to sign but did not see how much money she was due to be paid as a result of the case. She never knew the amount of the back wages due (Exhibit B-3b).

When re-interviewed, the second employee corroborated that the employer had the workers sign the blank WH-58 form (Exhibit B-2b). The WH58 received by this office was signed by the employer, Ms. Glenda Publico, and attests to having paid the workers their back wages under penalty of fine or imprisonment for making false statements. The second employee states that she was not given the form on the day that she was taken to the bank by Mr. Publico and made to return the money (Exhibit B-2b). On the WH-58 form signed by the employee and Mrs. Publico, the employer wrote the number of the check that the employee received and cashed (Exhibit E-2).

Alleged retaliatory action:

EX. 7(E) after asking the employer about the investigation and the status of her back wages, she was terminated. The employee who told EX. 7(E) about the previous federal investigation and the secret that they had not told her about back wages was also let go EX. 7(E) (Exhibits B-1 and B-2). They were the only two employees terminated EX. 7(E)

The allegation is substantiated as the employer told the two employees that the business was being sold; however, records show that the employer did not sell the facility they worked in, but another one located at 2644 Carson Way. Shortly after her departure from 1840 Kern Mountain Way, the alleged new owner took over;

however, other employees were retained by the employer. The WHI did a drop-in visit to the third employee in Exhibit B-3, she was working at the Kern Mountain location. No new state care license was issued for the location where the terminated employees worked and Ms. Glenda Publico is still licensed to operate the facility there (Exhibit E-1). This visit confirmed that only the two employees questioning the status of the investigations and discussing their back wages with the employer and one another were terminated.

Ex. 7(E)

Section 16:

Not applicable.

DISPOSITION

The DOL finds that a number of employees who were ordered to receive back wages from the employer were not paid and the complainant's allegation is substantiated. The DOL also finds that signed WH-58 forms submitted as proof of payment contain misrepresentation of the facts as the employees interviewed had no knowledge of the amount of back wages due to them and/or had not received payment.

Ex. 7(E) this case in September 2015, the California State Department of Labor Standards Enforcement and the Contra Costa District Attorney (CCDA) had conducted a task force site investigation of this employer in September 2014. The State of California had already ordered the employer to pay \$260,000 for minimum wage violations, \$190,000 for overtime violations, and \$312,000 in liquidated damages for violations which occurred between 2011 and 2014, a period of time which overlaps with the investigative period of the previous DOL cases. Ex. 7(E)

Given the multi-agency involvement in this case, San Francisco District Office assigned a WHI to gather facts regarding the allegations for referral the Contra Costa DA's office's ongoing criminal investigation. For this reason, there was no initial conference or final conference with the employer. Once the allegations of this case were substantiated, they were shared with the Contra Costa DA's office for criminal charges.

The DOL's San Francisco District Office referred this case to the Contra Costa District Attorney's office in September 2015 for further action with respect to the falsification of WH58s and outstanding back wages due to the employees. As of November 2015, the CCDA's office informed the DOL that they would be pressing charges against the owners for the falsification of the WH58s and for the recovery of back wages due the employees.

On February 1, 2016, the District Attorney's office notified SFDO that the employer's plea agreement is due to be finalized within a month. The deal would include probation for the employer and back wages totaling \$760,000 for the affected employees, including Ex. 7(E) those who contacted this office regarding non-payment

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of back wages under the previous investigation. The proceeds from sale of the home at 2644 Carson Way are intended to be used to pay the restitution.

Ex. 7(E)

Publications Provided:

Not applicable. This case was referred to the Contra Costa County District Attorney's office for resolution.

Recommendation:

Recommend administrative closure.

Ex. 7(E)

Wage and Hour Investigator
February 2, 2016